

CR-05 00215 JW  
HRL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

2009 MAR 10 P 2:35

*SAN JOSE DIVISION*

RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA, S.J.

THE UNITED STATES OF AMERICA

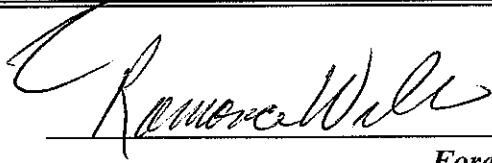
vs.

SAMUEL S. FUNG and  
ERIC AARON LIGHTER

THIRD SUPERSEDING INDICTMENT

- Count One: 18: U.S.C. § 371 - Conspiracy to Defraud the United States;
- Counts Two -Twenty Three: 26: U.S.C. § 7206(2) - Aiding and Assisting in Preparation of False and Fraudulent Tax Returns;
- Count Twenty Four: 18: U.S.C. § 371 - Conspiracy to Commit Wire Fraud;
- Counts Twenty-Five -Thirty Two: 18: U.S.C. §§ 1343 and 2 - Wire Fraud; Aiding and Abetting;
- Count Thirty-Three: 18: U.S.C. § 371: - Conspiracy to Commit Blackmail and Witness Tampering;
- Count Thirty-Four - Thirty Six: 18: U.S.C. §§ 1512(b)(1) and 2 -Witness Tampering; Aiding and Abetting;
- Count Thirty Seven- Thirty Nine: 18 U.S.C. §§ 873 and 2 - Blackmail; Aiding and Abetting

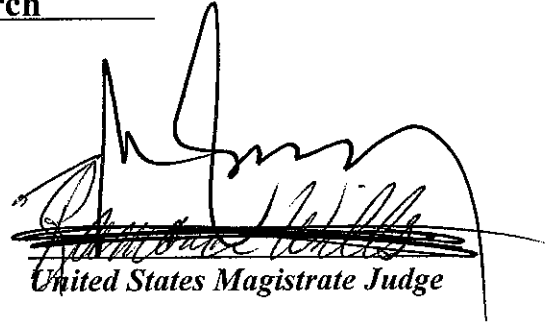
*A true bill.*

A handwritten signature in cursive script, appearing to read "R. Moore White", written over a horizontal line.

*Foreperson*

*Filed in open court this* 11th *day of* March

*A.D. 2009*

A handwritten signature in cursive script, appearing to read "R. Moore White", written over a horizontal line. Below the signature, the text "United States Magistrate Judge" is printed.

*Bail. \$* Issue Summons

JOSEPH P. RUSSONIELLO  
United States Attorney

FILED

2009 MAR 10 P 2:35

RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL S. FUNG and  
ERIC AARON LIGHTER,

Defendants.

No. CR 05-00215-JW

VIOLATIONS: 18 U.S.C. § 371  
Conspiracy (Three Counts); 18 U.S.C.  
§ 1343 - Wire Fraud (Eight Counts);  
18 U.S.C. § 873 - Blackmail (Three  
Counts); 18 U.S.C. § 1512(b)(1) - Witness  
Tampering (Three Counts); 18 U.S.C. § 2 -  
Aiding and Abetting (Fourteen Counts);  
26 U.S.C. § 7206(2) - Aiding and Assisting  
in Preparation of False and Fraudulent  
Tax Returns (22 Counts)

SAN JOSE VENUE

THIRD SUPERSEDING INDICTMENT

The Grand Jury charges:

At all times relevant to this Indictment:

INTRODUCTORY ALLEGATIONS

1. The federal income tax system of the United States of America relies upon citizens, including those individuals engaged in the profession of preparing income tax returns, to truthfully, accurately, and timely report income and expense information to the Internal Revenue

1 Service, an agency of the United States within the Department of the Treasury of the United  
2 States.

3 2. Samuel S. Fung (hereinafter defendant FUNG) was a resident of San Jose,  
4 California; he now resides in Medford, Oregon.

5 3. Eric Aaron Lighter (hereinafter defendant LIGHTER) was a resident of Hawaii.

6 4. National Trust Services, which had addresses in California, Oregon and Utah, was  
7 an organization purporting to <sup>and provide</sup> ~~provide~~ financial advice and services.

8 5. Defendant Fung provided services for clients of National Trust Services, including  
9 preparing tax returns under the business names Cortland Tax Management and Professional  
10 Business Consultants, LLC.

11 6. Credit Bureau International, Inc., Honolulu Inn, Inc. and Honolulu Rail and  
12 Development, Ltd. were corporations controlled by defendant LIGHTER.

13 7. Introductory Allegations paragraphs 1 through 6 are alleged in each of the  
14 following Counts of the Superseding Indictment as though fully set forth therein.

15  
16 **Count 1**

17 **CONSPIRACY TO DEFRAUD THE UNITED STATES – 18 U.S.C. § 371**  
18 **OBJECT OF THE CONSPIRACY**

19 8. Beginning on or before August 2, 1997, and continuing thereafter up to and  
20 through March 31, 2006, within the Northern District of California and elsewhere, defendants

21 **SAMUEL S. FUNG and**  
22 **ERIC AARON LIGHTER**

23 and others both known and unknown to the Grand Jury, unlawfully, knowingly and intentionally  
24 combined, conspired, confederated, and agreed to defraud the United States by deceitful and  
25 dishonest means by impeding, impairing, obstructing, and defeating the lawful government  
26 functions of the Internal Revenue Service of the Department of the Treasury of the United States  
27 of America, in the ascertainment, computation, assessment, and collection of federal income  
28 taxes.

**MEANS BY WHICH THE OBJECT OF  
THE CONSPIRACY WAS TO BE ACCOMPLISHED**

9. Defendants and others both known and unknown to the Grand Jury carried out their conspiracy through the following means, among others:

A. Defendants FUNG and LIGHTER, and others, individually and jointly, for themselves and on behalf of others, established fictitious business names through which they and others purported to receive income and hold assets in order to defraud the United States of America by attempting to conceal theirs and others' assets and income from the Internal Revenue Service;

B. Defendants FUNG and LIGHTER, and others prepared, and caused to be prepared, false and fraudulent federal income tax returns;

C. Defendant FUNG referred clients to defendant LIGHTER;

D. Defendants FUNG and LIGHTER advised clients to establish, and helped them establish, corporations;

E. Defendant LIGHTER offered to conduct, conducted or caused to be conducted financial transactions to hide assets from the Internal Revenue Service for his clients, including clients shared with defendant FUNG;

F. Defendants FUNG and LIGHTER provided false and fraudulent advice to clients regarding the defendants' programs and practices;

G. Defendant LIGHTER prepared false and fraudulent documents, including but not limited to, fraudulent liens on clients' assets;

**OVERT ACTS**

10. In furtherance of said conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed by members of the conspiracy in the Northern District of California and elsewhere:

A. On or about August 2, 1997, defendant FUNG signed a document purporting to appoint a successor trustee to a trust of Dr. Irwin Gootnick (hereinafter Gootnick),

1 the Gootnick Family Trust.

2 B. On or about April 1, 1998, defendant FUNG agreed to prepare both <sup>RU</sup> established by  
3 personal income tax returns and trust tax returns for Gootnick, including the trusts previously ~~by~~  
4 National Trust Services: the Gootnick Family Trust; the Full Dimension Trust; and the Gootnick  
5 Charitable Trust, which was later changed to Gootnick Charitable Trust, Inc. (hereinafter GCTI).

6 C. On or about August 16, 2000, defendant FUNG signed on behalf of  
7 National Trust Services a letter addressed to National Trust Services Trustees.

8 D. In or about late 2003, defendant FUNG told Gootnick that the Internal  
9 Revenue Service was aggressively pursuing, auditing, and penalizing individuals who set up  
10 similar trusts.

11 E. On or about March 2, 2004, defendant FUNG told Gootnick that defendant  
12 LIGHTER could help resolve Gootnick's potential problems with the Internal Revenue Service,  
13 and defendant FUNG gave Gootnick defendant LIGHTER's contact information.

14 F. In or about early March 2004, defendant LIGHTER told Gootnick that  
15 Gootnick's trusts were fake and that by using them, Gootnick had committed fraud, and  
16 furthermore, that the Internal Revenue Service was vigorously and maliciously pursuing  
17 individuals who used such trusts, often sending those individuals to prison or subjecting them to  
18 excessive penalties and fines.

19 G. In or about the middle of March 2004, defendant FUNG called Gootnick  
20 to inform him that defendant LIGHTER required \$10,000 in cash for defendant LIGHTER's  
21 services.

22 H. On or about March 24, 2004, defendant FUNG met with Gootnick to  
23 receive the \$10,000 cash payment.

24 I. On or after March 24, 2004, defendant FUNG transferred \$10,000 to  
25 defendant LIGHTER;

26 J. On or about April 3, 2004, defendant LIGHTER prepared a Mutual  
27 Assignment of Stock that purported to grant defendant LIGHTER's interest in shares of  
28

1 Hawaiian Colony Hotel Corporation stock to Gootnick in exchange for Gootnick granting  
2 defendant LIGHTER shares of GCTI stock.

3 K. On or about April 15, 2004, defendant LIGHTER prepared false tax  
4 returns for Gootnick and GCTI, for the tax years 2000, 2001, 2002 and 2003.

5 L. On or about October 8, 2004, defendant LIGHTER had a conversation  
6 with Gootnick regarding GCTI.

7 M. On or about October 14, 2004, defendant LIGHTER executed a "Real  
8 Property Mortgage" from "GFT, by Eric Aaron LIGHTER, Its Trustee" to Honolulu Rail and  
9 Development Ltd. in the amount of \$350,000, and recorded this instrument with the City and  
10 County of San Francisco Office of the Assessor-Recorder.

11 N. On or about November 15, 2004, defendant LIGHTER executed a "Real  
12 Property Mortgage" from "GFT, a California Trust, by and through its Trustee, Super Teaching  
13 Corporation, a Hawaii Corporation" to Credit Bureau International, Inc., purportedly in  
14 consideration <sup>Re: for</sup> of \$1,500,000, and recorded this instrument with the City and County of  
15 San Francisco Office of the Assessor-Recorder.

16 O. On or about January 14, 2005, defendant LIGHTER, as President of  
17 Honolulu Rail and Development Ltd., executed an "Assignment of Mortgage and Promissory  
18 Note" from Honolulu Rail and Development Ltd. to Credit Bureau International, Inc., in the  
19 amount of \$1,500,000, and recorded this instrument with the City and County of San Francisco  
20 Office of the Assessor-Recorder.

21 P. In or about 1995, defendant FUNG agreed to prepare personal and trust tax  
22 returns for Dr. Morris Brock (hereinafter Brock).

23 Q. In or about March 2003, defendant FUNG referred Brock to defendant  
24 LIGHTER.

25 R. On or about March 28, 2003, defendant LIGHTER drafted documents  
26 purporting to transfer Brock's assets to Hawaiian Colony Hotel Corporation.

27 S. On or about March 28, 2003, defendant LIGHTER instructed Brock to not  
28

1 refer to the transferred assets in any conversations with the Internal Revenue Service and to tell  
2 the Internal Revenue Service that Brock did not own any assets.

3 T. In or about 2003, defendant FUNG referred Jean-Paul Bourdier  
4 (hereinafter Bourdier), a client for whom defendant FUNG prepared federal income tax returns,  
5 to defendant LIGHTER.

6 U. On or about October 23, 2003, defendants FUNG and LIGHTER caused  
7 the filing Articles of Incorporation for Heart Mind Corporation with the State of Oregon,  
8 identifying Bourdier and his wife as the incorporators.

9 V. On or about October 29, 2003, defendant LIGHTER prepared a 2002  
10 corporate income tax return for Heart Mind Corporation.

11 W. On or about the dates set forth below, in the Northern District of  
12 California, defendant FUNG prepared for presentation to the Internal Revenue Service, false and  
13 fraudulent U.S. Income Tax Returns for Estates and Trusts, Forms 1041, for the taxpayers,  
14 entities and calendar years specified:

	<u>DATE</u>	<u>TAXPAYER(S)</u>	<u>ENTITY</u>	<u>YEAR</u>
16	1. 10/23/00	Dr. Morris Brock & Catherine Haney	B&B Trust	1999
17	2. 10/23/00	Dr. Morris Brock & Catherine Haney	Insight Co. Trust	1999
18	3. 07/18/01	Dr. Morris Brock & Catherine Haney	B&B Trust	2000
19	4. 07/19/01	Dr. Morris Brock & Catherine Haney	Insight Co. Trust	2000
20	5. 01/06/03	Dr. Morris Brock & Catherine Haney	B&B Trust	2001
21	6. 01/06/03	Dr. Morris Brock & Catherine Haney	Insight Co. Trust	2001
22	7. 11/28/99	Steve McKenzie	McKenzie Family Trust	1998
23	8. 11/28/99	Steve McKenzie	McKenzie Family Resonance Trust	1998
24	9. 01/23/01	Steve McKenzie	McKenzie Family Trust	1999
25	10. 01/22/01	Steve McKenzie	McKenzie Family Resonance Trust	1999
26	11. 10/18/02	Steve McKenzie	McKenzie Family Trust	2000
27	12. 10/18/02	Steve McKenzie	McKenzie Family Resonance Trust	2000



13.	04/18/99	William Garvey	Alpha Services Trust	1998
14.	04/18/99	William Garvey	Dancing Bear Trust	1998
15.	04/15/99	Ralph & Patricia Habura	RPH Management Trust	1998
16.	07/18/00	Ralph & Patricia Habura	RPH Management Trust	1999
17.	04/16/01	Ralph & Patricia Habura	RPH Management Trust	2000
18.	10/13/01	Elaine Campbell	Springfield Trust	2000
19.	10/13/01	Elaine Campbell	E & B Family Trust	2000
20.	04/15/01	Jean-Paul Bourdier & Minh-Ha Trinh	MG Trust	2000
21.	04/15/01	Jean-Paul Bourdier & Minh-Ha Trinh	Ninjaco Trust	2000
22.	04/15/01	Jean-Paul Bourdier & Minh-Ha Trinh	Murdrachi Trust	2000
23.	04/28/02	Jean-Paul Bourdier & Minh-Ha Trinh	MG Trust	2001
24.	04/28/02	Jean-Paul Bourdier & Minh-Ha Trinh	Ninjaco Trust	2001
25.	04/28/02	Jean-Paul Bourdier & Minh-Ha Trinh	Murdrachi Trust	2001
26.	04/15/99	Donald & Mary Brockhage	The Maridon Trust	1998
27.	04/15/99	Donald & Mary Brockhage	Brockhage Associated Trust	1998
28.	04/19/00	Donald & Mary Brockhage	The Maridon Trust	1999
29.	04/18/00	Donald & Mary Brockhage	Brockhage Associated Trust	1999
30.	04/15/99	Riley & Joyce Pendergraft	NHUSS Trust	1998
31.	04/15/99	Riley & Joyce Pendergraft	RJ Pendergraft Trust	1998
32.	04/15/99	Riley & Joyce Pendergraft	In God We Trust	1998
33.	04/17/00	Riley & Joyce Pendergraft	NHUSS Trust	1999
34.	04/17/00	Riley & Joyce Pendergraft	RJ Pendergraft Trust	1999
35.	04/17/00	Riley & Joyce Pendergraft	In God We Trust	1999
36.	04/16/01	Riley & Joyce Pendergraft	NHUSS Trust	2000
37.	04/16/01	Riley & Joyce Pendergraft	RJ Pendergraft Trust	2000
38.	04/16/01	Riley & Joyce Pendergraft	In God We Trust	2000

X. On or about the dates set forth below, in the Northern District of California, defendant FUNG prepared for presentation to the Internal Revenue Service, false and fraudulent U.S. Corporation Income Tax Returns, Forms 1120, for the taxpayers, entities and

calendar years specified:

	<u>DATE</u>	<u>TAXPAYER(S)</u>	<u>ENTITY</u>	<u>YEAR</u>
1.	08/10/03	Elaine Campbell	Springfield, Inc.	2001
2.	08/10/03	Elaine Campbell	E & B FT, Inc.	2001
3.	08/10/03	Elaine Campbell	Springfield, Inc	2002
4.	08/10/03	Elaine Campbell	E & B FT, Inc.	2002
5.	06/01/03	Jean-Paul Bourdier & Minh-Ha Trinh	MG Inc.	2002
6.	11/17/03	Jean-Paul Bourdier & Minh-Ha Trinh	Ninjaco, Inc.	2002
7.	06/01/03	Jean-Paul Bourdier & Minh-Ha Trinh	Murdrachi, Inc	2002

Y. On or about the dates set forth in Counts 2 through 21, below, defendant FUNG prepared for presentation to the Internal Revenue Service, false and fraudulent U.S. Income Tax Returns, Forms 1040.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH TWENTY-ONE (26 U.S.C. § 7206(2))

11. On or about the dates set forth below, in the Northern District of California, the defendant

SAMUEL S. FUNG

did willfully aid and assist in, and procure, counsel, and advise, the preparation and presentation to the Internal Revenue Service, of U.S. Individual Income Tax Returns, Forms 1040, either individual or joint, for the taxpayers and calendar years specified below, which, as defendant FUNG well knew and believed, were false and fraudulent as to the material matters identified below:

COUNT	DATE	TAXPAYER	TAX YEAR	MATERIAL FALSE ITEM(S)
2	04/17/00	Eric Chamness	1999	Line 21 - \$(6,416) Sch. A, Line 18 - \$35,424 Sch. A, Line 20 - \$17,714
3	04/16/01	Eric Chamness	2000	Line 12 - \$(15,750) Sch. A, Line 18 - \$32,779 Sch. A, Line 20 - \$21,907

4	04/15/02	Eric Chamness	2001	Line 21 - \$(6,040) Sch. A, Line 18 - \$71,164 Sch. A, Line 20 - \$29,119 Sch. A, Line 22 - \$10,000
5	05/17/01	Shah Shahjahan	1999	Line 21 - \$(45,500) Sch. A, Line 18 - \$35,619
6	10/22/00	Dr. Morris Brock & Catherine Haney	1999	Line 8a - \$882 Line 9 - \$188 Line 12 - \$0 Line 21 - \$(696,070)
7	07/18/01	Dr. Morris Brock. & Catherine Haney	2000	Line 8a - \$243 Line 9 - \$64 Line 12 - \$0 Line 17 - \$0
8	01/06/03	Dr. Morris Brock & Catherine Haney	2001	Line 8a - \$66 Line 12 - \$0 Line 17 - \$0
9	11/02/99	Steve McKenzie	1998	Line 12 - \$0
10	01/23/01	Steve McKenzie	1999	Line 12 - \$0
11	10/16/01	Steve McKenzie	2000	Line 12 - \$760
12	04/15/99	William & Joyce Garvey	1998	Line 9 - \$34 Line 12 - \$(12,185) Line 13 - \$0
13	04/15/99	Ralph & Patricia Habura	1998	Line 9 - \$0 Line 13 - \$0 Line 17 - \$(8,769)
14	07/18/00	Ralph & Patricia Habura	1999	Line 9 - \$0 Line 13 - \$0 Line 17 - \$0
15	04/15/01	Ralph & Patricia Habura	2000	Line 8a - \$2 Line 9 - \$31 Line 17 - \$0
16	10/23/01	Elaine Campbell	2000	Line 8a - \$8,828 Line 9 - \$0 Line 13 - \$(1,106) Line 21 - \$(306,522)
17	08/13/03	Elaine Campbell	2001	Line 8a - \$1,891 Line 9 - \$0 Line 13 - \$0
18	08/16/03	Elaine Campbell	2002	Line 8a - \$12 Line 9 - \$0 Line 13 - \$0

19	04/16/01	Jean-Paul Bourdier & Minh-Ha Trinh	2000	Sch. A, Line 10 - \$87,774
20	04/28/02	Jean-Paul Bourdier & Minh-Ha Trinh	2001	Line 9 - \$0 Sch. A, Line 10 - \$95,612
21	06/03/03	Jean-Paul Bourdier & Minh-Ha Trinh	2002	Line 9 - \$11 Sch. A, Line 10 - \$76,477

All in violation of Title 26, United States Code, Section 7206(2).

COUNTS TWENTY-TWO AND TWENTY-THREE (26 U.S.C. § 7206(2))

12. On or about the dates set forth below, in the Northern District of California, the defendant

SAMUEL S. FUNG

did willfully aid and assist in, and procure, counsel, and advise, the preparation and presentation to the Internal Revenue Service, of joint U.S. Individual Income Tax Returns, Forms 1040, for the taxpayers and calendar years specified below, which, as defendant FUNG well knew and believed, were false and fraudulent as to the material matters identified below:

COUNT	DATE	TAXPAYER	TAX YEAR	MATERIAL FALSE ITEM(S)
22	04/15/99	Donald & Mary Brockhage	1998	Line 8a - \$230 Line 9 - \$0 Line 12 - \$3,385
23	04/17/00	Donald & Mary Brockhage	1999	Line 8a - \$162 Line 9 - \$0 Line 12 - \$1,374

All in violation of Title 26, United States Code, Section 7206(2).

COUNT TWENTY-FOUR: (18 U.S.C. § 371 – Conspiracy to Commit Wire Fraud)

13. Beginning on or about March 25, 2003, and continuing thereafter up to and through March 10, 2006, within the Northern District of California and elsewhere, defendants

SAMUEL S. FUNG and  
ERIC AARON LIGHTER

did unlawfully, willfully, and knowingly combine, conspire, confederate and agree among

1 themselves to commit wire fraud, in violation of Title 18, United States Code Section 1343.

2  
3 **MEANS BY WHICH THE OBJECT OF  
THE CONSPIRACY WAS TO BE ACCOMPLISHED**

4 14. Defendants and others both known and unknown to the Grand Jury carried out  
5 their conspiracy through the following means, among others:

6 A. Defendant FUNG referred clients to defendant LIGHTER;

7 B. Defendants FUNG and LIGHTER purported to fight the Internal Revenue  
8 Service on behalf of clients;

9 C. Defendants FUNG and LIGHTER advised clients to establish, and helped  
10 them establish, corporations;

11 D. Defendant LIGHTER offered to conduct, conducted or caused to be  
12 conducted financial transactions to hide assets from the Internal Revenue Service for his clients,  
13 including clients shared with Defendant FUNG;

14 E. Defendants FUNG and LIGHTER provided false and fraudulent advice to  
15 clients that the programs promoted by defendants were legal;

16 F. Defendant LIGHTER purported to exchange clients' interests in their  
17 businesses for interests in defendant LIGHTER'S businesses;

18 G. Defendant LIGHTER prepared false and fraudulent documents, including  
19 but not limited to, fraudulent liens on client assets;

20 H. Defendants FUNG and LIGHTER threatened to and did make disclosures  
21 to law enforcement agencies in retaliation to clients not acquiescing in defendants' actions.

22 I. Defendants FUNG and LIGHTER transmitted and caused to be  
23 transmitted wire communications.

24 **OVERT ACTS**

25 15. In furtherance of said conspiracy, and to effect the objects thereof, the following  
26 overt acts, among others, were committed by members of the conspiracy in the Northern District  
27 of California and elsewhere:  
28

*R<sup>w</sup>*  
Overt

A. ~~Over~~ Acts D through O, and Q through V from Count One, Conspiracy to Defraud, are incorporated as though fully set out herein.

B. On or about the dates set forth in Counts 25 through 32, below, defendants FUNG and LIGHTER did use or cause to be used the wire transmissions identified.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWENTY-FIVE THROUGH THIRTY-TWO: (18 U.S.C. §§ 1343 and 2 –Wire Fraud; Aiding and Abetting)

16. On or about the dates set forth below, in the Northern District of California, the defendants

SAMUEL S. FUNG and  
ERIC AARON LIGHTER

did knowingly devise or participate in a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of materially false or fraudulent pretenses, representations, or promises with the intent to defraud; and in advancing or carrying out the scheme, the defendants used, or caused to be used, the wires in that the defendants participated in a scheme to obtain money and property from the individuals identified below by means of materially false or fraudulent pretenses, representations, or promises with the intent to defraud, and in doing so the defendants did and did aid and abet the same, knowingly cause to be delivered by wire communications in interstate commerce the following items:

Count	Date of Wire	Description of Item Transmitted By Wire
25	04/08/03	West Coast Credit and Development, Inc. Articles of Incorporation wired to Brock
26	04/11/03	Document stating unreported income on trusts wired to Brock
27	09/23/03	\$5,500 transmitted by Bourdier
28	10/14/04	\$33,000 transmitted by Gootnick
29	10/21/04	\$150,000 transmitted by Gootnick
30	10/22/04	\$200,000 transmitted by Gootnick
31	10/27/04	\$90,000 transmitted by Gootnick

32	11/18/04	\$20,000 transmitted by Gootnick
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All in violation of Title 18, United States Code, Sections 1343 and 2.

### **INTRODUCTORY ALLEGATIONS COMMON TO COUNTS 33 THROUGH 39**

17. On or about April 12, 2005, the grand jury sitting in the Northern District of California returned a 49-count indictment alleging that defendant FUNG aided and assisted the preparation and presentation of false and fraudulent tax returns.

18. On or about May 18, 2005, Gootnick and his wife filed a verified complaint against defendant LIGHTER in the Superior Court of the State of California asserting two causes of action. This state court action was subsequently removed to the United States District Court for the Northern District of California.

#### **COUNT THIRTY-THREE:** (18 U.S.C. § 371: Conspiracy to Commit Blackmail and Witness Tampering)

19. Beginning on or about March 2, 2006 and continuing until on or about April 30, 2006, in the Northern District of California, the defendants

SAMUEL S. FUNG and  
ERIC AARON LIGHTER

knowingly entered into a criminal agreement with one another and possibly others to obstruct justice by committing blackmail and by knowingly attempting to persuade a witness to provide false testimony or to withhold evidence with the intent to influence, delay, or prevent the witness's testimony in an official proceeding and that an overt act was committed by one of the conspirators for the purpose of carrying out the conspiracy, in violation of Title 18, United States Code Sections 873 and 1512(b)(1).

#### **MEANS BY WHICH THE OBJECT OF THE CONSPIRACY WAS TO BE ACCOMPLISHED**

20. Defendant FUNG pressured Gootnick to provide false, favorable testimony in favor of defendant FUNG in defendant FUNG's then pending criminal case, and attempted to convince Gootnick to dismiss the civil case against defendant LIGHTER.



22. Defendant FUNG and LIGHTER communicated with Gootnick and with each other by telephone to achieve their ends.

22. Defendant FUNG and LIGHTER communicated with Gootnick and with each other by telephone to achieve their ends.

## OVERT ACTS

23. In furtherance of the conspiracy and to effect the objects thereof, the following overt acts were committed in the Northern District of California and elsewhere:

A. On or about March 2, 2006, during a telephone call, defendant FUNG threatened Gootnick.

B. On or about March 3, 2006, during a telephone conversation that began at approximately 5:00 p.m., defendant FUNG stated that “the government is deciding whether they’re going to prosecute you criminally,” and suggested that Gootnick should drop his lawsuit against defendant LIGHTER.

C. On or about March 3, 2006, at approximately 5:25 p.m., defendant FUNG telephoned defendant LIGHTER.

D. On or about March 3, 2006, during a telephone conversation that began at approximately 5:30 p.m., defendant FUNG stated that defendant LIGHTER would “cancel the bankruptcy” and “would testify for us instead of against us” if Gootnick dropped the lawsuit.

E. On or about March 3, 2006, at approximately 5:33 p.m., defendant FUNG telephoned defendant LIGHTER.

F. On or about March 3, 2006, at approximately 5:35 p.m., defendant FUNG telephoned Gootnick and stated if Gootnick dropped his lawsuit against defendant LIGHTER, defendant LIGHTER would “drop the bankruptcy” and would not turn over documents to the government that could send Gootnick to jail.

G. On or about March 10, 2006, during a telephone conversation with Gootnick that began at approximately 2:55 p.m., defendant FUNG stated that Gootnick could either be defendant FUNG's friend or his enemy. Later in the conversation, defendant FUNG



1 stated that defendant LIGHTER possessed five boxes of evidence which, if provided to the  
2 Internal Revenue Service or the California Franchise Tax Board, could result in Gootnick's being  
3 criminally charged with tax evasion.

4 All in violation of Title 18, United States Code, Section 371.

5 COUNT THIRTY-FOUR: (18 U.S.C. §§ 1512(b)(1) and 2 --Witness Tampering; Aiding and  
6 Abetting)

7 24. On or about March 2, 2006, in the Northern District of California, the defendants

8  
9 SAMUEL S. FUNG and  
ERIC AARON LIGHTER

10 knowingly attempted to intimidate, threaten, and corruptly persuade Gootnick with the intent to  
11 influence or prevent Gootnick's testimony in an official proceeding, in that the defendants  
12 threatened that Gootnick would go to jail for tax evasion if Gootnick testified for the government  
13 in the criminal trial against defendant FUNG.

14 All in violation of Title 18, United States Code, Sections 1512(b)(1) and 2.

15 COUNT THIRTY-FIVE: (18 U.S.C. §§ 1512(b)(1) and 2 --Witness Tampering; Aiding and  
16 Abetting)

17 25. On or about March 3, 2006, in the Northern District of California, the defendants

18  
19 SAMUEL S. FUNG and  
ERIC AARON LIGHTER

20 knowingly attempted to intimidate, threaten, and corruptly persuade Gootnick with the intent to  
21 influence or prevent Gootnick's testimony in an official proceeding, in that the defendants  
22 threatened that Gootnick would go to jail for tax evasion if Gootnick testified for the government  
23 in the criminal trial against defendant FUNG.

24 All in violation of Title 18, United States Code, Sections 1512(b)(1) and 2.

25  
26 COUNT THIRTY-SIX: (18 U.S.C. §§ 1512(b)(1) and 2 --Witness Tampering; Aiding and  
27 Abetting)

28 26. On or about March 10, 2006, in the Northern District of California, the defendants

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SAMUEL S. FUNG and  
ERIC AARON LIGHTER

knowingly attempted to intimidate, threaten, and corruptly persuade Gootnick with the intent to influence or prevent Gootnick's testimony in an official proceeding, in that the defendants threatened that Gootnick would go to jail for tax evasion if Gootnick testified for the government in the criminal trial against defendant FUNG.

All in violation of Title 18, United States Code, Sections 1512(b)(1) and 2.

COUNT THIRTY-SEVEN: (18 U.S.C. §§ 873 and 2 –Blackmail; Aiding and Abetting)

27. On or about March 2, 2006, in the Northern District of California, the defendants

SAMUEL S. FUNG and  
ERIC AARON LIGHTER

threatened to expose a violation of federal law in exchange for a thing of value in that the defendant FUNG threatened to report Gootnick to the Internal Revenue Service for tax evasion in order to persuade Gootnick to dismiss his civil suit against defendant LIGHTER.

All in violation of Title 18, United States Code, Sections 873 and 2.

COUNT THIRTY-EIGHT: (18 U.S.C. §§ 873 and 2 –Blackmail; Aiding and Abetting)

28. On or about March 3, 2006, in the Northern District of California, the defendants

SAMUEL S. FUNG and  
ERIC AARON LIGHTER

threatened to expose a violation of federal law in exchange for a thing of value in that the defendant FUNG threatened to report Gootnick to the Internal Revenue Service for tax evasion in order to persuade Gootnick to dismiss his civil suit against defendant LIGHTER.

All in violation of Title 18, United States Code, Sections 873 and 2.

COUNT THIRTY-NINE: (18 U.S.C. §§ 873 and 2 –Blackmail; Aiding and Abetting)

29. On or about March 10, 2006, in the Northern District of California, the defendants

SAMUEL S. FUNG and  
ERIC AARON LIGHTER

threatened to expose a violation of federal law in exchange for a thing of value in that the  
defendant FUNG threatened to report Gootnick to the Internal Revenue Service for tax evasion in  
order to persuade Gootnick to dismiss his civil suit against defendant LIGHTER.

All in violation of Title 18, United States Code, Sections 873 and 2.

A True Bill

Dated: 3/11/09

  
FOREPERSON

JOSEPH P. RUSSONIELLO  
United States Attorney

  
BRIAN STRETCH  
Chief, Criminal Section

Approved as to Form

  
BLAKE D. STAMM  
Assistant United States Attorney

AO 257 (Rev. 8/78)

**DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT  
☒ SUPERSEDING**OFFENSE CHARGED**

See attachment

☐ Petty  
☐ Minor  
☒ Misdemeanor  
☒ Felony**PENALTY:**

See attachment

**PROCEEDING**

Name of Complainant Agency, or Person (&amp; Title, if any)

INTERNAL REVENUE SERVICE

☐ person is awaiting trial in another Federal or State Court, give name of court☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:☐ U.S. Att'y ☐ Defense☐ this prosecution relates to a pending case involving this same defendant☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded underSHOW  
DOCKET NO.MAGISTRATE  
CASE NO.Name and Office of Person  
Furnishing Information on THIS FORM☒ U.S. Att'y ☐ Other U.S. AgencyName of Asst. U.S. Att'y  
(if assigned) BLAKE D. STAMM, AUSA, TAX DIV.Name of District Court, and/or Judge/Magistrate Location  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

DEFENDANT - U.S. 2009 MAR 10 P 2:35

SAMUEL S. FUNG and ERIC ARON LIGHTER

DISTRICT COURT NUMBER S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

CR-05-00215-JW

**DEFENDANT****IS NOT IN CUSTODY**1) ☒ Has not been arrested, pending outcome this proceeding.  
If not detained give date any prior summons was served on above charges2) ☐ Is a Fugitive3) ☐ Is on Bail or Release from (show District)

NORTHERN DISTRICT OF CALIFORNIA

**IS IN CUSTODY**4) ☐ On this charge5) ☐ On another conviction6) ☐ Awaiting trial on other charges☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF  
ARREST

Month/Day/Year

Or... If Arresting Agency &amp; Warrant were not

Month/Day/Year

DATE TRANSFERRED  
TO U.S. CUSTODY☐ This report amends AO 257 previously submitted**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**☒ SUMMONS ☐ NO PROCESS\*☐ WARRANT

Bail Amount: cont. condition of release

If Summons, complete following:

☒ Arraignment ☒ Initial Appearance

\*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

**Defendant Address:**Jerry Yee Fong  
Carey & Carey  
P.O. Box 1040  
Palo Alto, CA 94302-1040Jack Dennis Gordon  
Law Office Jack Gordon  
95 S. Market St., #300  
San Jose, CA 95113

Date/Time: March 16, 2009 at 11:00 am

Before Judge: Magistrate Judge Howard R. Lloyd

Comments:

Attachment to Third Superseding Indictment Penalty Sheet  
SAMUEL S. FUNG and ERIC AARON LIGHTER  
No. CR-05-00215-JW

18 U.S.C. § 371 - Conspiracy (Three Counts)

- 5 years prison
- \$250,000 fine
- 3 years supervised release
- \$100 special assessment

18 U.S.C. § 1343 - Wire Fraud (Eight Counts)

- 20 years prison
- \$250,000 fine
- 3 years supervised release
- \$100 special assessment

18 U.S.C. § 873 - Blackmail (Three Counts)

- 1 year prison
- \$100,000 fine
- 1 year supervised release
- \$25 special assessment

18 U.S.C. § 1512(b)(1) - Witness Tampering (Three Counts)

- 10 years prison
- \$250,000 fine
- 3 years supervised release
- \$100 special assessment

26 U.S.C. § 7206(2) - Aiding and Assisting in Preparation of False and Fraudulent of False Tax Returns (Twenty-Two Counts)

- 3 years prison
- \$250,000 fine
- 1 years supervised release
- \$100 special assessment